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# IMPORT REGULATIONS

## BEST PRACTICES RESEARCH MEMORANDUM

MARCH 2008

This publication was produced for review by the United States Agency for International Development. It was prepared by Walter Hekala and Lisa Hillmann of Nathan Associates Inc.

# **IMPORT REGULATIONS**

## **BEST PRACTICES RESEARCH MEMORANDUM**

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## INTRODUCTION

This research memorandum provides guidance on six issues raised by the Trade Agreements Sector/Foreign Trade Sector of Egypt's Ministry of Trade and Industry:

1. Rules for importing empty boxes that bear origin markings that do not relate to the exporting/producing country.
2. Definition of importation (e.g., when does an importation actually take place).
3. Whether the customs authority is generally responsible for following fraudulent merchandise after it has cleared customs and, if so, the limits on tracking such goods after they have crossed the border
4. Rules for importing product logos by entities other than the authorized licensee.
5. Penalties for noncompliant importers (e.g., financial, administrative, or criminal penalties for smuggling—including undeclared merchandise hidden in containers—for importing products that have exceeded their past-due date, for under-invoicing, and for other types of fraud).
6. The length of time that importers must keep import documentation.

The case countries considered in this review include Australia, India, New Zealand, and the United States, as well as the European Union. Because the Statement of Work required a rapid response, our research and review of legislation and regulations was not complemented by consultations with the government agencies of the case country governments. When research did not uncover regulations or legislation pertaining to the questions at hand, we used the best information available. In providing guidance, this research memorandum takes into account the larger customs and trade environment.

## 1. ORIGIN MARKINGS

*What are the rules for importing empty boxes that bear origin markings that do not relate to the exporting/producing country?*

Our review determined that the importation of empty boxes that may bear a country of origin marking unrelated to the exporting or producing country is not a regulated activity in any case country. The United States has provisions for the use of the box after importation that may be applicable (see sidebar), and specific origin labeling may sometimes be required. For example, if a box is produced in one country and the contents in another, labeling for the final consumer may be required to include language to the following effect: “Product A was produced in Country X and the box was produced in country Y.” This type of provision is particularly applicable when the box itself could be a marketable product (e.g., a candy box of such durability and design as to have other functional uses). These same general requirements are followed in Australia, New Zealand, and the EU.

Though the importation of the empty boxes with origin markings unrelated to the exporter/producer country may not require regulation, Customs should take into account the purpose for the importation. The importation of such boxes is acceptable when

- Goods were imported in bulk and are being repackaged in the empty boxes for final consumption in the importing country; or
- Goods were already imported for final consumption, but the original boxes were damaged because of poor storage or rough handling in customs clearance, requiring replacement boxes.

Importation of such boxes is not acceptable when

- They are being imported to convey false information to the end consumer;
- They may be part of transshipment fraud—a scheme to re-export goods with a false country of origin (i.e. clothing is shipped from China to Egypt then repackaged, relabeled, and re-exported to avoid a third-country quota).

It is the responsibility of the Customs authority to ask the importer about the purpose of the importation. None of our case countries, however, applies a regulation to such importation.

### UNITED STATES

#### Title 19, Chapter 4, Subtitle II--Special Provisions, Part I

##### Sec. 1304. Marking of imported articles and containers (abridged)

Usual containers (container in which an imported article will ordinarily reach the ultimate purchaser) imported empty to be filled may be excepted from individual marking if they reach the person or firm that will fill them in a carton or other container marked with the country of origin.

Unusual containers imported empty, to be filled in the United States, must be marked “Container made in (country).” These may include containers not ordinarily sold at retail with their contents, or containers which have further use or value after their contents are consumed.

For example, a vase made in France containing candy made in England must be marked: “Vase made in France, candy made in England.”

If an article is intended to be repacked in new containers for sale to an ultimate purchaser after its release from U.S. Customs and Border Protection custody, the importer must certify that if he does the repacking, he shall not obscure or conceal the country of origin marking, or that the new container will be properly marked. If the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer must certify that he/she will notify the subsequent purchaser or repacker (in writing) of the marking requirements.

## 2. THE DEFINITION OF IMPORTATION

### *What defines an importation and when does importation occur?*

The event that constitutes “importation” is the event that triggers the application of several other laws and regulations. Specifying when importation occurs specifies when the “clock starts” on statutes of limitation for complying with customs and other regulatory requirements.

The simple definition of importation in the customs codes of our case countries is *the entry of goods into the national territory, formal clearance processes of the customs administrations, or entry of the goods for free circulation (post customs clearance)*. Even within customs’ vernacular, however, the meaning of importation has nuances, such as

- Importation for free circulation,
- Temporary importation,
- Warehouse importation, and
- Illegal importation.

For this reason, the terms “entry” or “lodgment” are used to indicate the filing of a declaration: the act of formally presenting goods to customs for processing under one of the specified customs regimes. Thus, in Chapter 2 of the General Annex of the revised Kyoto Declaration a “Goods Declaration,” means a

statement made in the manner prescribed by the Customs, by which the persons concerned indicate the Customs procedure to be applied to the goods and furnish the particulars which the Customs require for its application

By this definition, the time of importation can be established relative to the filing or lodgment of the declaration. In some countries, importation may also be defined as the release of goods from the control of customs. The Kyoto Convention describes the “release of goods” as the “action by the Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned.”

The case countries generally use the time of filing as the time of importation. The new EU Customs Code accommodates the use of the importer’s electronic business data for clearance purposes: the date and time of the entry into the importer’s internal systems—to which customs has access—becomes the date and time of declaration filing or lodgment.

For smuggled goods, the customs administrations’ date of importation is the date of entry into the territory. Of course, the date is approximate as there is no declaration filed. For other goods, the date of release from customs may be used. The statute of limitations for most criminal and civil penalties, however, starts from *the date of offence*. Most laws governing customs violations use the date of declaration as the offence date. The release date is applied when there may be a change of “regimes,” such as a change from the warehouse to release for free circulation.

A clearly defined date of importation is most significant when establishing the tolling date for a statute of limitations for a criminal or civil action. For example, the statute of limitations for a civil penalty action under 19 USC 1592 is generally limited to five years from the date of the offence, except in the case of fraud, which uses the date of the discovery of violation. The statute for limitations for underpaid duties is five years from the date of discovery (19 USC 1621).

As mentioned, the new EU code permits declaration filing by means of the importer's electronic records. The time of filing is the time that the records are lodged in the company's record keeping system. The importer self-regulates such that the filing is a matter of company policy whereby the status of goods for customs purposes changes from pre-importation to post importation. This law is untried in the court systems and not recommended for Egypt at this time.

## What defines importation/entry?

Country	Legislative/Regulatory Language
United States	<p>The Customs Service defines "entry" not merely as the arrival of goods at a port, but as the process of presenting documentation for clearing goods through Customs. Imported merchandise not entered through Customs in a timely manner (within 15 calendar days of arrival) is sent by Customs to a general order warehouse to be held as unclaimed. The importer is responsible for paying storage charges while unclaimed merchandise is held at the warehouse. If it remains unclaimed at the end of six months, the merchandise is sold at auction.</p> <p><a href="http://www.americanimporters.org/pages/marketing/USImportrequirements.html">http://www.americanimporters.org/pages/marketing/USImportrequirements.html</a></p> <p>Entry: Notification to CBP of the arrival of imported goods in the CBP territory of the US Merchandise withdrawn from a zone for consumption in the US is entered when it is removed from the zone. Goods brought into a zone are admitted.</p>
EU	<p><b>CHAPTER 2, ARRIVAL OF GOODS</b></p> <p><b>Section 1—Entry of goods into the customs territory of the Community</b></p> <p><b>Article 97</b></p> <p><i>Customs supervision</i></p> <p>1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision and may be subject to customs controls. Where applicable, they shall be subject to the prohibitions and restrictions, justified on grounds of, inter alia,</p> <p>public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of the environment, the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property, including controls on drug pre-cursors, goods infringing certain intellectual property rights and cash entering the Community, as well as to the implementation of fishery conservation and management measures and of commercial policy measures. They shall remain under such supervision for as long as is necessary to determine their customs status and shall not be removed therefrom without the permission of the customs authorities.</p> <p><b>Article 119 (Formerly Article 115)</b></p> <p><i>Acceptance of a declaration</i></p> <p>1. Declarations which comply with the conditions laid down in this Chapter shall be accepted by the customs authorities immediately, provided that the goods to which they refer have been presented to customs or to the satisfaction of the customs authorities, will be made available for customs controls. Where the declaration takes the form of an entry in the declarant's records and access to this data by the customs authorities, the declaration shall be deemed to have been accepted at the moment at which the goods are entered into the records. The customs authorities may, without prejudice to the legal obligations of the declarant or to the application of security and safety controls waive the obligation for the goods to be presented or to be made available for customs control.</p>
Australia	<p><a href="http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s269t.html">http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s269t.html</a></p> <p><b>CUSTOMS ACT 1901 - SECT 269T</b></p> <p>Importation period , in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:</p>

Country	Legislative/Regulatory Language
	<p>(a) in respect of <a href="#">goods</a> covered by a retrospective notice--the period beginning on the day of entry for home consumption of the first consignment of goods to which the retrospective notice applied and ending immediately before the day of publication of the notice; and</p> <p>(b) in respect of goods covered by a prospective notice:</p> <p>(i) the period of 6 months beginning on the day of publication of the prospective notice; and</p> <p>(ii) each successive period of 6 months.</p> <p>"Importer" , in relation to goods exported to Australia, means:</p> <p>(a) if paragraph (b) or (d) does not apply--the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed; or</p> <p>(b) if the goods are taken from parts beyond the seas to an Australian resources installation or if they are goods on board an overseas resources installation at the time when it is attached to the Australian seabed--the beneficial owner of the goods at the time when they are imported into Australia; or</p> <p>(c) if the goods are an overseas resources installation that becomes attached to the Australian seabed--the beneficial owner of the installation at the time when it is imported into Australia; or</p> <p>(d) if the goods are taken from parts beyond the seas to an Australian sea installation or are goods on board an overseas sea installation at the time when it is installed in an adjacent area or a coastal area--the beneficial owner of the goods at the time when they are imported into Australia; or</p> <p>(e) if the goods are an overseas sea installation that becomes installed in an adjacent area or in a coastal area--the beneficial owner of the installation at the time when it is imported into Australia.</p>
New Zealand	<p>23. When entry of imported goods deemed to be made – An entry of goods to which section 39(1) of the Act applies is deemed to have been made for the purposes of the Act, –</p> <p>(a) In the case of an entry made by means of an electronic message, on the date and at the time that the Customs computerised entry processing system generates a lodgement number in respect of the receipt of that message; and</p> <p>(b) In any other case, when the entry has been received by the Customs.</p> <p><a href="http://www.customs.govt.nz/library/Legislation/CE+Regulations+1996/Part+IV+-+Entry+and+Accounting+for+Goods.htm">http://www.customs.govt.nz/library/Legislation/CE+Regulations+1996/Part+IV+-+Entry+and+Accounting+for+Goods.htm</a></p> <p><b>39 Entry of imported goods</b></p> <p>(1) Subject to any regulations made under section 40 of this Act, goods that are imported or that are to be imported must be entered by the importer—</p> <p>(a) In such form and manner (including by electronic means into a computer or other device) as may be prescribed; and</p> <p>(b) Within such time as may be prescribed or such further time as the Chief Executive may allow.</p> <p>(2) Where any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry shall specify the volume of alcohol in the prescribed manner.</p> <p>(3) Every person entering goods under this section must—</p> <p>(a) Answer any question asked by a Customs officer with respect to the goods; and</p> <p>(b) On the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.</p> <p>(3A) Every person entering goods under this section may, in accordance with any conditions</p>



Country	Legislative/Regulatory Language
	<p>a Customs officer may impose,—</p> <ul style="list-style-type: none"> <li>(a) inspect the goods; or</li> <li>(b) draw samples from the goods.</li> </ul> <p>(4) If—</p> <ul style="list-style-type: none"> <li>(a) Default is made in the entry of goods pursuant to this section; or</li> <li>(b) The goods are not claimed within such period as may be prescribed,—</li> </ul> <p>duty becomes due and payable on the goods, and the goods may be sold or otherwise disposed of by the Chief Executive.</p> <p><b>40— Regulations relating to entry of imported goods</b></p> <p>Without limiting the power to make regulations under section 286 of this Act, the Governor-General may from time to time, by Order in Council, make regulations—</p> <ul style="list-style-type: none"> <li>(a) Prescribing when an entry is deemed to have been made for the purposes of this Act; and</li> <li>(b) Prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and</li> <li>(c) Exempting specified goods or goods of a specified class from the requirements of section 39(1) of this Act, subject to such conditions as may be prescribed; and</li> <li>(d) Prescribing goods or classes of goods that shall be deemed to have been entered under section 39(1) of this Act and the circumstances in which and the conditions subject to which those goods shall be so deemed.</li> </ul>
India	<p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch1.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch1.pdf</a></p> <p>(16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84;</p> <p>(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;</p> <p>(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;</p> <p>(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;</p>

### 3. LIMITS OF CUSTOMS AUTHORITY

*Is the customs authority responsible for following fraudulent merchandise after it has cleared customs and, if so, for how long after such goods have crossed the border?*

For most customs authorities, any obligation ends within the three to five years imposed by statutes of limitations. In the United States, however, code interpretation is unusually stringent; customs' authority under the law does indeed carry forward an obligation to protect the government revenue—and this responsibility literally is without end. U.S. laws hold that there is no statute of limitations on duties owed to the government and nor on imposing penalties for intentional fraud. The only limiting factor is that the government must take action within five years of the date of discovery.

Another key provision of general laws or custom codes is to hold third parties innocent. After importation, goods may not be seized from innocent third parties even though duties may be collected and penalties exacted from the importer of record. The government may not seize legal goods that otherwise would be no longer subject to customs control when those goods are no longer under the control of the violator. The EU has the most liberal provisions, defining goods cleared by customs as domestic goods.

Customs' limits are also defined by customs' ability to lead civil and criminal investigations and prosecutions after goods have passed beyond physical control at borders. U.S. law also permits civil and criminal penalties relative to the same importation. This is an unusual position as most countries limit to either civil remedies or criminal prosecution. The customs codes of Australia and New Zealand extend control past borders as their customs agencies gather evidence of previous violations. The role of customs in post-clearance investigations varies widely in the EU. The United Kingdom's HM Customs has a strong mandate to investigate violations after importation, but in Italy the Financial Police have this mandate.

U.S. liability provisions also require that the government—customs—prove culpability to one of three levels: simple negligence, gross negligence, or fraud. A different range of penalties applies to each level. When businesses take steps to correct inadvertent errors or simple negligence, the government does not impose penalties (see 19 U.S.C. 1592 and 1621 for a clear understanding of these provisions). Similar provisions are administratively applied in other countries, including Australia, New Zealand, and some EU countries. (There are no EU penalties per se, and only individual countries investigate allegations. Thus, there is no definitive answer to the control of the EU customs administrations after customs clearance).

The obligation to protect people from dangerous goods carries beyond the border. Most customs laws include provisions for recalling cleared goods when goods are later found to be inadmissible (e.g., health, safety, marking). Such provisions are necessary as modern customs practice is to release goods without inspection. Risk management means taking risks; though customs is constantly improving its ability to predict risk accurately, it will make mistakes and must have recourse to post-clearance recall. For example, see 19 CFR 141.113 for U.S. regulations. In New Zealand, if the Chief Executive has “reasonable grounds” to suspect that an offence has been committed, he may require the individual in possession of the goods to produce them for inspection.<sup>1</sup>

The EU draft Customs Code takes the opposite position. Goods acquire “community status” once they have completed the lodgment of the customs declaration and are not

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<sup>1</sup> [http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM379222.html?search=ts\\_act\\_customs+and+excise](http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM379222.html?search=ts_act_customs+and+excise)

distinguishable from domestic goods unless there is a provision that would identify the goods as distinct from such. The new provisions of the EU Code would appear to make all goods no longer in customs processing beyond the reach of the customs administration. This position appears to be further confirmed as there are no provisions for redelivery, recall, or re-examination once goods are released. Likewise, in Australia, “Community goods [are not] subject to customs supervision once their customs status is established.”

## How far does customs authority reach?

Country	Legislative/Regulatory Language
United States	<p><b>§ 1621. Limitation of actions</b></p> <p>No suit or action to recover any duty under section 1592 (d), 1593a (d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; except that—</p> <p>(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and</p> <p>(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.</p>
EU	<p><b>Article 107—Presumption of customs status of goods as Community goods</b></p> <p>1. Without prejudice to Article 171 all goods in the customs territory of the Community shall be presumed to be Community goods, unless it is established that they do not have the customs status of goods as Community goods.</p> <p>2. The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down</p> <p>(a) the cases in which the presumption referred to in paragraph 1 of this article shall not apply;</p> <p>(b) the means by which the customs status of goods as Community goods may be established;</p> <p>(c) the cases in which the goods wholly obtained in the customs territory of the Community shall not have the customs status of goods as Community goods if they are obtained from goods placed under external transit, storage, temporary admission or inward processing, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 196(4).</p> <p><b>Article 108—Loss of customs status of goods as Community goods</b></p> <p>Community goods shall become non-Community goods in the following cases:</p> <p>(a) where they are moved out of the customs territory of the Community, in so far as the rules on internal transit or the measures laid down in accordance with Article 109 do not apply;</p> <p>(b) where they have been placed under the external transit, storage or inward processing procedure, in so far as the customs legislation so allows;</p> <p>(c) where they have been placed under the end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;</p> <p>(d) where the declaration for release of goods for free circulation is invalidated after release in accordance with measures adopted pursuant to the second subparagraph of Article 117(2).</p> <p><b>Article 117 (Formerly Article 128)—Supplementary declaration</b></p>

Country	Legislative/Regulatory Language
	<p>1. In the case of a simplified declaration pursuant to Article 114(1), the declarant shall furnish a supplementary declaration containing the further particulars necessary to complete the customs declaration for the customs procedure concerned. The supplementary declaration may be of a general, periodic or recapitulative nature. The measures designed to amend non-essential elements of this Regulation, by supplementing it, laying down exceptions to the first subparagraph of this paragraph shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 196(4).</p> <p>2. The supplementary declaration and the simplified declaration referred to in Article 114(1) shall be deemed to constitute a single, indivisible instrument taking effect on the date on which the simplified declaration is accepted in accordance with Article 119.</p> <p><b>Article 119 (Formerly Article 115)—Acceptance of a declaration</b></p> <p>1. Declarations which comply with the conditions laid down in this Chapter shall be accepted by the customs authorities immediately, provided that the goods to which they refer have been presented to customs or to the satisfaction of the customs authorities, will be made available for customs controls.</p> <p>Where the declaration takes the form of an entry in the declarant's records and access to this data by the customs authorities, the declaration shall be deemed to have been accepted at the moment at which the goods are entered into the records. The customs authorities may, without prejudice to the legal obligations of the declarant or to the application of security and safety controls waive the obligation for the goods to be presented or to be made available for customs control.</p> <p>2. Without prejudice to Article 117(2) or the second subparagraph of paragraph 1 of this article, where a customs declaration is lodged at a customs office other than the office at which the goods are presented, the declaration shall be accepted when the office at which the goods are presented confirms the availability of goods for customs controls.</p> <p>3. The date of acceptance of the customs declaration by the customs authorities shall, except where otherwise provided, be the date to be used for the application of the provisions governing the customs procedure for which the goods are declared and for all other import or export formalities.</p> <p>4. The Commission shall, in accordance with the procedure referred to in Article 196(2), adopt measures laying down detailed rules for the implementation of this article.</p>
Australia	<p>Goods “shall remain under such supervision for as long as is necessary to determine their customs status and shall not be removed there from without the permission of the customs authorities” Chapter 2, Section 1, Article 97.</p> <p>However, “without prejudice to Article 176 [end use], Community goods shall not be subject to customs supervision once their customs status is established”.</p> <p>Subdivision C—Search warrants in respect of things believed to be evidential material</p> <p><b>198 When search warrants can be issued</b></p> <p>(1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next 72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.</p> <p>(2) If:</p> <ul style="list-style-type: none"> <li>(a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and</li> <li>(b) the premises are not a Customs place; the person must state particulars of those applications and their outcome in the information.</li> </ul> <p><b>Access to premises</b></p> <p>Customs can enter premises, with the consent of the occupier, to exercise monitoring powers. Before exercising monitoring powers in respect of premises, a monitoring officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations. If the occupier does not grant consent, Customs must obtain a monitoring warrant to enter the premises and exercise monitoring powers. A Customs officer may give the occupier written</p>

Country	Legislative/Regulatory Language
	<p>notice of the wish to enter premises and exercise monitoring powers.</p> <p><b>Auditing for compliance</b></p> <p>The monitoring powers apply to anyone involved in the importation or exportation of goods. The powers aim to help industry to comply with their obligations under the Customs Act by allowing Customs to verify that the systems and procedures in use enable people to comply.</p>
New Zealand	<p><b>152 Examination of goods no longer subject to control of Customs</b></p> <p>(1) This section applies to goods that have ceased to be subject to the control of the Customs but that the Chief Executive has reasonable grounds to suspect are—</p> <ul style="list-style-type: none"> <li>(a) goods in respect of which an offence against this Act has been committed; or</li> <li>(b) goods that are forfeited to the Crown under section 225.</li> </ul> <p>(2) The Chief Executive may require a person who has, or who the Chief Executive believes has, possession or control of the goods to produce them for inspection by a Customs officer.</p> <p>(3) A Customs officer may exercise in respect of the goods all the powers given by section 151.</p> <p>(4) A Customs officer may take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers given by subsection (3), and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods—</p> <ul style="list-style-type: none"> <li>(a) are goods in respect of which an offence against this Act has been committed; or</li> <li>(b) are goods that are forfeited to the Crown under section 225.</li> </ul> <p><a href="http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM379222.html?search=ts_act_customs+and+excise">http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM379222.html?search=ts_act_customs+and+excise</a></p> <p><b>151 – Examination of goods subject to control of Customs</b></p> <p>(1) A Customs officer may examine, weigh, analyse, or test, or cause to be examined, weighed, analysed, or tested goods subject to the control of the Customs or goods that the officer has reasonable cause to suspect are subject to the control of the Customs, and may, for that purpose, open or cause to be opened any packages in which the goods are contained or suspected to be contained.</p> <p>(2) All reasonable expenses incurred by the Customs under subsection (1) of this section, are a debt due to the Crown by the importer or exporter or the owner of the goods, as the case may be, and are recoverable in the same manner as duty under this Act.</p> <p>(3) The powers conferred by subsection (1) of this section extend to the examination, weighing, analysing, or testing of a suitcase, pallet, bulk cargo container, or other package.</p> <p>(4) The examination—</p> <ul style="list-style-type: none"> <li>(a) may include the physical or chemical testing of, or the drilling into, or the dismantling of, the goods; and</li> <li>(b) may be facilitated by any means whatever (for example, by a dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device).</li> </ul> <p>(5) Samples of goods subject to the control of the Customs or suspected to be subject to the control of the Customs may be taken and used by the Customs for the purposes of this section, and disposed of in the prescribed manner.</p> <p>(6) Any sample taken in accordance with subsection (5) must be as small as possible for the purpose for which it is taken.</p> <p>(7) A Customs officer must, subject to section 173, be allowed free access to all lands, buildings, and places, and to all goods in or on any lands, buildings, or places, for the purpose of exercising powers under this section in respect of goods that are, or are suspected to be,—</p> <ul style="list-style-type: none"> <li>(a) subject to the control of the Customs; and</li> <li>(b) in a Customs-approved secure package or in a package to which a Customs seal has been applied.</li> </ul>

Country	Legislative/Regulatory Language
	<p>(8) Despite subsection (7), a Customs officer must not enter a private dwelling except with the consent of an occupier or owner of that dwelling or pursuant to a warrant issued under this Act.</p> <p><b>20 Goods subject to control of Customs</b></p> <p>(1) Goods are subject to the control of the Customs,—</p> <p>(a) Where the goods have been imported, from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area; or</p> <p>(aa) Where the goods are lawfully removed from a Customs controlled area under a conditional permit granted pursuant to section 47(1)(c), until such time as the Chief Executive is satisfied that the conditions of the permit have been met; or.</p> <p>(ab) where the goods are to be exported (whether under drawback or not) and are in a package to which a Customs seal has been applied (whether or not any other paragraph of this subsection applies to the goods), from the time when a Customs seal is first applied to the package until the exportation of the goods to a point outside New Zealand; or</p> <p>(ac) where the goods are to be exported (whether under drawback or not) under a Customs-approved secure exports scheme (whether or not any other paragraph of this subsection applies to the goods), from the time when the goods are first secured in a Customs-approved secure package until the exportation of the goods to a point outside New Zealand; or</p> <p>(b) where the goods are to be exported under drawback, from whichever is the earlier of the following times until the exportation of the goods to a point outside New Zealand:—</p> <p>(i) the time of the claim for drawback; or</p> <p>(ii) the time when the goods are brought to a Customs controlled area or to a CASE (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation); or</p> <p>(c) where the goods are to be exported otherwise than under drawback, from the time when the goods are brought to a Customs controlled area or to a CASE (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation), until their exportation to a point outside New Zealand; or</p> <p>(d) Where the goods are on board any craft described in section 139(1) of this Act, at all times that the craft is within New Zealand; or</p> <p>(e) Where the goods are manufactured in a Customs controlled area, from the time of manufacture until the goods are lawfully removed for home consumption from a Customs controlled area, or the goods are exported to a point outside New Zealand, whichever happens first; or</p> <p>(f) Where the goods are owned by or in the possession of an internationally ticketed passenger who is using air or sea travel for a domestic sector or a domestic passenger who is using air or sea travel for a domestic sector, from the time when, at the commencement of the domestic sector, the goods are—</p> <p>(i) Brought into a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or</p> <p>(ii) Accepted for carriage by an airline or shipping company—until the time when, at the end of the domestic sector, the goods are lawfully removed from a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or</p> <p>(g) In the case of domestic cargo (not being goods to which paragraph (f) of this section applies), from the time when the goods are brought within a Customs controlled area that is in a Customs place until the time when the goods are lawfully removed from that</p>

Country	Legislative/Regulatory Language
	<p>or any other Customs controlled area.</p> <p>(2) For the purposes of subsection (1), goods that are removed from a Customs controlled area to another Customs controlled area are not removed for home consumption.</p>
India	Information not available.



## 4. RULES FOR IMPORTING PRODUCT LOGOS BY ENTITIES OTHER THAN THE AUTHORIZED LICENSEE

*What rules govern the importing of product logos by entities other than authorized licensees?*

Rights holders should register intellectual property with customs to enable rights protection. If the importer of record is not the same as the rights holder, it is within the rights of a customs authority to make further inquiries with the rights holder. The customs codes or other legislation in the countries we reviewed contain provisions that permit the customs administrations to act independently when there appears to be an infringement of a logo. Customs can detain goods and notify the rights holder of the detention. Ultimately, however, full enforcement of anti-infringement actions requires that customs and the rights holder cooperate. When a party other than an authorized licensee is the importer, customs should detain the goods and notify the rights holder. The customs code should specify a period for the rights holder to take action through the court.

### Intellectual Property Enforcement

Country	Website
United States	<a href="http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/ipr_enforcement/">http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/ipr_enforcement/</a>
EU	<p><a href="http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/right_holders/index_en.htm">http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/right_holders/index_en.htm</a></p> <p><a href="http://europa.eu/scadplus/leg/en/lvb/l11018c.htm">http://europa.eu/scadplus/leg/en/lvb/l11018c.htm</a></p> <p>Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.</p> <p>Where goods are suspected of infringing intellectual property rights, the right-holder may lodge a written application with the relevant customs authorities. Such an application for action must include an accurate and detailed technical description of the goods in question, any information concerning the nature of the fraud and the name and address of the contact person appointed by the right-holder. The right-holder may also request the intervention of the customs authorities of one or more Member States if he is the holder of a Community trademark, design or model, a Community protection, a new plant variety, a designation of origin, or a geographical indication or designation protected by the Community.</p> <p>The law applicable when deciding whether an intellectual property right has been infringed is the law in force in the Member State where the goods were found. In accordance with national provisions, and with the right-holder's agreement, the Member States may now set up a simplified procedure to enable the customs authorities to have the goods destroyed. If the infringement of an intellectual property right is not established within a set deadline, the detention order is lifted and the goods are released once the necessary customs formalities have been discharged. The deadline is shorter in the case of perishable goods.</p> <p>If the customs authorities have sufficient reason to suspect that goods are infringing an intellectual property right, they may suspend the release of goods or retain goods for three working days, during which time the right-holder must submit an application for action. In accordance with the rules in force in the Member State concerned, the customs authorities may ask the right-holder for information to help them in their investigation.</p> <p>The competent customs office sets a period during which the action must take place. Such a period may not exceed one year. The decision to take action is notified to the customs office in the Member State or States concerned. The customs office may request additional information.</p> <p>Commission Regulation (EC) No 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003 concerning customs action</p>



Country	Website
	<p>against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights [Official Journal L 328 of 30.10.2004].</p> <p>This Regulation clarifies the provisions for the implementation of Council Regulation No 1383/2003. It defines the natural and legal persons who may represent the holder of a right or any other person authorised to use the right. It is also necessary to specify the nature of the proof of ownership of intellectual property.</p> <p>The Regulation lays down a model form and the language requirements for applications for action to ensure harmonisation and standardisation in this area. It also specifies the type of information to be included in applications for action in order to facilitate the work of the customs administrations by recognising the goods that may infringe an intellectual property right. It also lays down the type of right-holder liability declaration that must accompany the application for action.</p> <p>In the interests of legal certainty, the Regulation specifies when the time periods for the determination of an infringement of an intellectual property right commence.</p> <p>The Regulation also lays down the procedures for the exchange of information between Member States and the Commission, so that it is possible for the Commission to monitor the effective application of the procedure and recognise patterns of fraud, and for the Member States to introduce appropriate risk analysis.</p>
Australia	<p><a href="http://www.customs.gov.au/site/page.cfm?u=5369">http://www.customs.gov.au/site/page.cfm?u=5369</a></p> <p>Import provisions under the Copyright Act 1968, Trade Marks Act 1995 and Olympic Insignia Protection Act 1987 allow Customs, under certain circumstances, to seize goods that infringe trade marks, copyright and protected Olympic expressions. These provisions give rise to Australia's Notice of Objection Scheme.</p> <p>Customs can only seize goods suspected of infringing intellectual property rights if there is a valid Notice of Objection in place. If a Notice is in place, Customs may seize goods when it is considered that they appear to infringe and it appears they are intended for some commercial purposes. In some circumstances, a single product might be subject to seizure if it is believed that it will be used for commercial purposes.</p> <p>A Notice of Objection is a legal document that allows Customs to seize imported goods that infringe trade marks, copyright or protected Olympic expressions.</p> <p>The power of Customs is restricted to seizing infringing goods that are subject to the control of Customs and are covered by a Notice of Objection. A Notice of Objection cannot act retrospectively for goods that have already been imported.</p>
New Zealand	<p><a href="http://www.customs.govt.nz/importers/Commercial+Importers/Trade+Marks.htm">http://www.customs.govt.nz/importers/Commercial+Importers/Trade+Marks.htm</a></p> <p><a href="http://www.customs.govt.nz/importers/Commercial+Importers/Counterfeiting+and+Piracy.htm">http://www.customs.govt.nz/importers/Commercial+Importers/Counterfeiting+and+Piracy.htm</a></p>
India	<p>Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/csnt47-2k7.htm">http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/csnt47-2k7.htm</a></p> <p>"6.Prohibition for import of goods infringing intellectual property rights.- After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.</p> <p>7. Suspension of clearance of imported goods.-</p> <p>(1)(a) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, based on the notice given by the right holder has a reason to believe that the imported goods are suspected to be goods infringing intellectual property rights, he shall suspend the clearance of the goods.</p> <p>(b)The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may, on his own initiative, suspend the clearance of goods, in respect of which he has prima-facie evidence or reasonable grounds to believe that the imported goods are goods infringing intellectual property rights.</p>

Country	Website
	<p>(2) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall immediately inform the importer and the right holder or their respective authorised representatives through a letter issued by speed post or through electronic mode of the suspension of clearance of the goods and shall state the reasons for such suspension.</p> <p>(3) Where clearance of the goods suspected to be infringing intellectual property has been suspended and the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with:</p> <p>Provided that the above time-limit of ten working days may be extended by another ten days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.</p> <p>(4) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder does not give notice under rule 3 of the Rules or does not fulfill the obligation under Rule 5, within five days from the date of suspension of clearance, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with.</p> <p>(5) Where the clearance of goods has been suspended, customs may, where it acts on its own initiative, seek from the right holder any information or assistance, including technical expertise and facilities for the purpose of determining whether the suspect goods are counterfeit or pirated or otherwise infringe an intellectual property right.</p> <p>(6) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder has given notice under rule 3 of the Rules and fulfilled the obligations under Rule 5, but, the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of their import under the Customs Act, 1962, have been complied with:</p> <p>Provided that the above time- limit of ten working days may be extended by another ten working days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.</p> <p>(7) In the case of perishable goods suspected of infringing intellectual property rights, the period of suspension of release shall be three working days which may be extended by another four days subject to the satisfaction of the Commissioner or the officer authorized by him in this behalf that such extension shall not affect the goods.</p> <p>(8) Notwithstanding anything contained in these Rules, in the case of suspension of clearance of perishable goods on the basis of notice of the right holder or his authorized representative, the right holder or his authorized representative shall join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7) and in case of suspension of clearance of perishable good by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, on his own initiative, the right holder shall give notice, execute a bond and join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7), as the case may be, failing which the goods shall be released.</p> <p>(9) If within ten working days or the extended period under sub-rule (6), as the case may be, and within three working days or the extended period as provided in sub-rule (7) of this rule in the case of perishable goods, the right-holder or his authorized representative joins the proceedings, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, having reasons to believe that the goods are goods infringing intellectual property rights and liable to confiscation under section 111 (d) of the Customs Act, may seize the same under section 110 of the Customs Act.</p> <p>Instructions for implementation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007</p>

Country	Website
	<p><a href="http://www.cbec.gov.in/customs/cs-circulars/cs-circulars07/circ41-2k7-cus.htm">http://www.cbec.gov.in/customs/cs-circulars/cs-circulars07/circ41-2k7-cus.htm</a></p> <p>Prohibits the import of certain goods as specified in the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/csnt49-2k7.htm">http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/csnt49-2k7.htm</a></p> <p>Also:</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch4a.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch4a.pdf</a></p> <p>CUSTOMS ACT OF 1962 - CHAPTER IVA—DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch13.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch13.pdf</a></p> <p>CHAPTER XIII—SEARCHES, SEIZURE AND ARREST</p> <p>100. Power to search suspected persons entering or leaving India, etc.</p>

## 5. PENALTIES FOR NONCOMPLIANT IMPORTERS

*What financial, administrative, or criminal penalties are imposed for smuggling (including undeclared merchandise hidden in containers), importing products that have exceeded their past-due date, under-invoicing, and other types of fraud?*

Each of the case countries imposes administrative (or Civil Code) penalties that result in forfeiture of goods and /or significant financial penalties. In addition, there are criminal penalties for violations of the customs laws such as smuggling or false statements in the customs declaration process that may result in financial penalties and/or incarceration. For example, under Title 18 USC 542, entry of goods falsely classified may result in fines and/or incarceration of not more than two years; Title 18 USC 545, smuggling goods into the United States, may result in fines and/or imprisonment of not more than five years (see illustrative provisions in the table below)<sup>2</sup>. Punitive measures in Australia, New Zealand, and India likewise have a strong deterrent effect.

### US Code - Title 18: Crimes and Criminal Procedures

Section	Offense	Penalty
Title 18, Part I, Chapter 27, § 541	Entry of goods falsely classified	"fined under this title or imprisoned not more than two years, or both"
Title 18, Part I, Chapter 27, § 542	Entry of goods by means of false statements	"fined for each offense under this title or imprisoned not more than two years, or both"
Title 18, Part I, Chapter 27, § 544	Relanding of goods	"each person concerned shall be fined under this title or imprisoned not more than two years, or both; and such merchandise shall be forfeited"
Title 18, Part I, Chapter 27, § 545	Smuggling goods into the United States	"fined under this title or imprisoned not more than five years, or both"

Source: [http://www.law.cornell.edu/uscode/html/uscode18/usc\\_sup\\_01\\_18\\_10\\_I\\_20\\_27.html](http://www.law.cornell.edu/uscode/html/uscode18/usc_sup_01_18_10_I_20_27.html)

However, the cost of complying must be lower than the cost of not complying if penalty schemes are to be effective. The United States Code for administrative or civil code penalties (19 USC 1592) contains excellent schemes that balance penalties with culpability in order to work with businesses to improve compliance. Each year, the US Customs and Border Protection Agency (USCBP) audits companies for voluntary compliance not to unearth violations but to measure compliance and check risk management assumptions. This combination of rationalized penalties and informed voluntary compliance has been very successful; for several years 95 percent or more of all due revenues have been submitted to the USCBP voluntarily.<sup>3 [1]</sup>

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<sup>2</sup> Until just recently, the fines for the criminal penalties had fixed maximum amounts, i.e. \$10000 for each count of smuggling established in the code provision. The U.S. has now removed the language on maximum amount of fines for each count to provide for consideration of the U.S. provisions for sentencing as required under Title 28 of the United States Code. See [http://en.wikipedia.org/wiki/Federal\\_Sentencing\\_Guidelines](http://en.wikipedia.org/wiki/Federal_Sentencing_Guidelines) for a brief description of this U.S. provision.

<sup>3</sup> Each year, the USCBP sends an accountability report to Congress. The 2007 report states: "The preliminary overall trade compliance rate for FY 2007 and 2006 is 98.1 and 96.6 percent, respectively. With overall compliance at a high level, CBP has been able to emphasize matters of significant trade risk." The report also tracks passenger compliance at airports and land borders for passengers. Compliance rates for passengers are also in the 95% or greater range.

Like the United States, Australia and New Zealand recognize the value of voluntary compliance, and utilize strategies of active engagement with the private sector.

Penalty provisions in the EU are left to individual countries (time and resource constraints precluded country by country research). The EU Customs Code includes several provisions whereby the customs debt may be extinguished.

Further details on the noncompliance penalties in the case countries are found below.

## Noncompliance penalties

Country	Legislative/Regulatory Language
United States	<p><b>TITLE 18: Crimes and Criminal Procedures</b>  <b>CHAPTER 27—CUSTOMS</b>  § 541. Entry of goods falsely classified  § 542. Entry of goods by means of false statements  § 543. Entry of goods for less than legal duty  § 544. Relanding of goods  § 545. Smuggling goods into the United States  § 546. Smuggling goods into foreign countries  § 547. Depositing goods in buildings on boundaries  § 548. Removing or repacking goods in warehouses  § 549. Removing goods from customs custody; breaking seals  § 550. False claim for refund of duties  § 551. Concealing or destroying invoices or other papers  § 552. Officers aiding importation of obscene or treasonous books and articles  § 553. Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft</p> <p><b>TITLE 19: Customs Duties</b>  <b>§ 1436. Penalties for violations of arrival, reporting, entry, and clearance requirements</b>  (a) Unlawful acts  It is unlawful—  (1) to fail to comply with section 1431, 1433, or 1434 of this title or section 91 of title 46, Appendix;  (2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 1431, 1433 (d), or 1434 of this title or section 91 of title 46, Appendix, without revealing the facts;  (3) to fail to make entry or to obtain clearance as required by section 1434 or 1644 of this title, section 91 of title 46, Appendix, or section 1644a (b)(1) or (c)(1) of this title; or  (4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).  (b) Civil penalty  Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) of this section is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.  (c) Criminal penalty</p>

<sup>[1]</sup> Each year, the USCBP sends an accountability report to Congress. The 2007 report states: “The preliminary overall trade compliance rate for FY 2007 and 2006 is 98.1 and 96.6 percent, respectively. With overall compliance at a high level, CBP has been able to emphasize matters of significant trade risk.” The report also tracks passenger compliance at airports and land borders for passengers. Compliance rates for passengers are also in the 95% or greater range.

Country	Legislative/Regulatory Language
	<p>In addition to being liable for a civil penalty under subsection (b) of this section, any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) of this section is, upon conviction, liable for a fine of not more than \$2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.</p> <p>(d) Additional civil penalty</p> <p>If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 1584 of this title, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.</p> <p><b>TITLE 19 § 1497. Penalties for failure to declare</b></p> <p>(a) In general</p> <p>(1) Any article which—</p> <p>(A) is not included in the declaration and entry as made or transmitted; and</p> <p>(B) is not mentioned before examination of the baggage begins—</p> <p>(i) in writing by such person, if written declaration and entry was required, or</p> <p>(ii) orally, if written declaration and entry was not required;</p> <p>shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.</p> <p>(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—</p> <p>(A) if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and</p> <p>(B) if the article is not a controlled substance, the value of the article.</p> <p>(b) Value of controlled substances</p> <p>(1) Notwithstanding any other provision of this chapter, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.</p> <p>(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.</p> <p><b>Title 19 § 1592. Penalties for fraud, gross negligence, and negligence</b></p> <p>Maximum penalties</p> <p>(1) Fraud—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.</p> <p>(2) Gross negligence— A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—</p> <p>(A) the lesser of—</p> <p>(i) the domestic value of the merchandise, or</p> <p>(ii) four times the lawful duties, taxes, and fees of which the United States is or may</p>

Country	Legislative/Regulatory Language
	<p>be deprived, or</p> <p>(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.</p> <p>(3) Negligence—A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—</p> <p>(A) the lesser of—</p> <p>(i) the domestic value of the merchandise, or</p> <p>(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or</p> <p>(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.</p> <p>(4) Prior disclosure</p> <p><b>§ 1593a. Penalties for false drawback claims</b></p> <p><b>§ 1595a. Forfeitures and other penalties</b></p> <p><b>§ 1627a. Unlawful importation or exportation of certain vehicles; inspections</b></p> <p>(a) Violations; penalties; seizures and forfeitures</p> <p>(1) Whoever knowingly imports, exports, or attempts to import or export—</p> <p>(A) Any [1] stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or</p> <p>(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;</p> <p>shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed \$10,000 for each violation.</p> <p>(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.</p> <p><b>§ 1621. Limitation of actions</b></p> <p>No suit or action to recover any duty under section 1592 (d), 1593a (d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; except that—</p> <p>(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and</p> <p>(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.</p> <p><a href="http://www.law.cornell.edu/uscode/pdf/uscode19/lii_usc_TI_19_CH_4_ST_III_PA_V_SE_1592.pdf">http://www.law.cornell.edu/uscode/pdf/uscode19/lii_usc_TI_19_CH_4_ST_III_PA_V_SE_1592.pdf</a></p>
European Union	<p><b>Section 5—Penalties</b></p> <p><i>Article 22—Application of penalties</i></p> <p>1. Each Member State shall provide for penalties for failure to comply with Community customs legislation. Such penalties shall be effective, proportionate and dissuasive.</p> <p>2. Where administrative penalties are applied, they may take, inter alia, one of the following forms, or both:</p>



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	<p>(a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;</p> <p>(b) the revocation, suspension or amendment of any authorization held by the person concerned.</p> <p>3. Member States shall notify the Commission, by six months after the date of application of this Regulation at the latest, of the national provisions in force in accordance with paragraph 1 and shall notify it without delay of any subsequent amendment affecting them.</p> <p><b>Section 4—Provisions common to customs debts incurred on importation and exportation</b></p> <p><i>Article 55—Prohibitions and restrictions</i></p> <p>The customs debt on importation or exportation shall be incurred even if it relates to goods which are subject to measures of prohibition or restriction on importation or exportation of any kind. However, no customs debt shall be incurred on either of the following:</p> <p>(a) the unlawful introduction into the customs territory of the Community of counterfeit currency;</p> <p>(b) the introduction into the customs territory of the Community of narcotic drugs and psychotropic substances other than where strictly supervised by the competent authorities with a view to their use for medical and scientific purposes.</p> <p>For the purposes of penalties as applicable to customs offences, the customs debt shall nevertheless be deemed to have been incurred where, under the law of a Member State, customs duties or the existence of a customs debt provide the basis for determining penalties.</p> <p><i>Article 56—Several debtors</i></p> <p>Where several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they shall be jointly and severally liable for the totality of the debt.</p> <p>The Commission may, in accordance with the procedure referred to in Article 196(2), adopt measures laying down the cases and conditions under which this provision shall be implemented.</p> <p><b>CHAPTER 4—EXTINGUISHMENT OF CUSTOMS DEBT</b></p> <p><i>Article 92—Extinguishment</i></p> <p>1. Without prejudice to Article 73 and the provision in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the legally established insolvency of the debtor, an obligation to pay the customs debt on importation or exportation shall be extinguished in any of the following ways:</p> <p>(a) by payment of the amount of import or export duty;</p> <p>(b) subject to paragraph 4, by remission of the amount of import or export duty;</p> <p>(c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties, the customs declaration is invalidated;</p> <p>(d) where goods liable to import or export duties are confiscated;</p> <p>(e) where goods liable to import or export duties are seized and simultaneously or subsequently confiscated;</p> <p>(f) where goods liable to import and export duties are destroyed under customs supervision or abandoned to the State;</p> <p>(g) where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure, or as a consequence of instruction by the customs authorities; for the purpose of this point, goods shall be considered as irretrievably lost when they have been rendered unusable by any person;</p> <p>(h) where the customs debt was incurred pursuant to Article 51 or 54 and where</p>



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	<p>the following conditions are fulfilled:</p> <p>(i) the failure which lead to the incurrence of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception,</p> <p>(ii) all of the formalities necessary to regularize the situation of the goods are subsequently carried out;</p> <p>(j) where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;</p> <p>(k) where it was incurred pursuant to Article 50 and where the formalities carried out in order to enable the preferential tariff treatment referred to in that Article to be granted are cancelled;</p> <p>(l) where, subject to paragraph 5 of this article, the customs debt was incurred pursuant to</p> <p>Article 51 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been exported from the customs territory of the Community.</p> <p>2. In the event of confiscation, as referred to in point (d) of paragraph 1, the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, under the law of a Member State, customs duties or the existence of a customs debt provide the basis for determining penalties.</p> <p>3. Where, in accordance with point (g) of paragraph 1, a customs debt is extinguished in respect of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, any scrap or waste resulting from their destruction shall be deemed to be non-Community goods.</p> <p>4. Where several persons are liable for payment of the amount of import or export duty corresponding to the customs debt and remission is granted, the customs debt shall be extinguished only in respect of the person or persons to whom the remission is granted.</p> <p>5. In the case referred to in point (l) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted deception.</p> <p>6. Where the customs debt was incurred pursuant to Article 51, it shall be extinguished with regard to the person whose behaviour did not involve any attempt at deception and who contributed to the fight against fraud.</p> <p>7. The Commission may, in accordance with the procedure referred to in Article 196(2), adopt measures for the implementation of this article.</p>
Australia	<p><b>Division 2—Penalties</b></p> <p>231 Assembly for unlawful purposes</p> <p>(1) All persons to the number of 2 or more assembled with the intention of:</p> <p>(a) importing prohibited imports; or</p> <p>(b) smuggling; or</p> <p>(c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods; shall be guilty of an offence punishable upon conviction by imprisonment for a period not exceeding 2 years.</p> <p>(2) This section does not apply to, or in relation to, narcotic goods.</p> <p>(3) An offence against this section is punishable upon summary conviction.</p> <p>Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the Criminal Code.</p> <p>233 Smuggling and unlawful importation and exportation</p> <p>(1) A person shall not:</p>

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	<p>(a) smuggle any goods; or</p> <p>(b) import any prohibited imports;</p>
New Zealand	<p><b>Part 10—Administrative penalties</b></p> <p>128 Imposition of penalty</p> <p>(1AA) In this Part, entry, in relation to any goods or class of goods deemed by regulations made under section 40(d) to have been entered under section 39(1), includes a document that, under those regulations, the Chief Executive requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered.</p> <p>(1) Subject to section 130 of this Act, where the Chief Executive is satisfied that an entry of goods pursuant to section 39 of this Act contains an error or omission and that as a result—</p> <p style="padding-left: 40px;">(a) An amount of duty payable under this Act has not been paid or declared for payment or would not have been paid or declared for payment; or</p> <p style="padding-left: 40px;">(b) The entry is otherwise materially incorrect,—</p> <p>the Chief Executive may give notice in writing to the person who made the entry stating that unless, within 20 working days after the date on which notice is given, that person satisfies the Chief Executive that the person is entitled to be exempted from the imposition of a penalty under section 130 of this Act, the Chief Executive will issue a penalty notice under subsection (2) of this section.</p> <p>(2) Where a person to whom a notice is given under subsection (1) of this section does not, within the period referred to in that subsection, satisfy the Chief Executive that the person is entitled to be exempted under section 130 of this Act from the imposition of a penalty under this section, the Chief Executive shall issue a notice to that person requiring that person to pay to the Chief Executive by way of penalty and in addition to the duty, if any, payable under this Act,—</p> <p style="padding-left: 40px;">(a) In any case where, as a result of the error or omission, an amount of duty payable under this Act (not consisting solely of goods and services tax) has not been paid or declared for payment,—</p> <p style="padding-left: 40px;">(i) \$50; or</p> <p style="padding-left: 40px;">(ii) An amount equal to 20 percent of the duty unpaid or not declared, up to a maximum amount of \$10,000,—</p> <p style="padding-left: 40px;">whichever is the greater:</p> <p style="padding-left: 40px;">(b) In any case (to which paragraph (a) of this subsection does not apply) where the error or omission has resulted in the entry being materially incorrect or, as a result of the error or omission, an amount of goods and services tax was not paid or declared for payment, as the case may be, \$50 in respect of each such entry.</p> <p>(3) The due date for the payment of any penalty imposed under this section is the date that is 20 working days after the date on which notice of the penalty is given by the Chief Executive.</p> <p>(4) The amount of the penalty constitutes a debt due to the Crown and is recoverable by action at the suit of the Chief Executive.</p> <p>(5) No person by or on whose behalf the amount of the penalty is paid is liable to prosecution for an offence in relation to the error or omission and the goods in relation to which the error or omission occurred are not liable to seizure under this Act.</p> <p>(6) Nothing in subsection (5) of this section applies to a prosecution or seizure in relation to goods that have been forfeited to the Crown by reason of the importation of the goods being prohibited or unlawful.</p> <p>(7) For the purposes of this section, materially incorrect means that the entry contains an error or omission in relation to any of the following matters:</p> <p style="padding-left: 40px;">(a) The identity of the overseas supplier:</p> <p style="padding-left: 40px;">(b) The identity of the importer:</p>

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	<p>(c) The identity of the person making the entry:</p> <p>(d) The identification of the importing craft or its voyage number:</p> <p>(e) The Bill of Lading, Air Waybill, or container identification details:</p> <p>(f) The supplier's invoice number:</p> <p>(g) Any permit number or code:</p> <p>(h) The Tariff item in which the goods are classified under the Tariff Act 1988:</p> <p>(i) The statistical quantity of the goods:</p> <p>(j) The currency code for the currency in which the goods are traded:</p> <p>(k) The value for duty expressed in the currency in which the goods are traded:</p> <p>(l) The value for duty expressed in New Zealand currency:</p> <p>(m) The country of origin of the goods:</p> <p>(n) The country from which the goods have been exported:</p> <p>(o) The amount paid or payable to transport the goods to New Zealand from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country:</p> <p>(p) The insurance costs associated with transporting the goods to New Zealand, inclusive of any insurance costs in the country of exportation.</p> <p>(8) Where any penalty imposed under this section remains unpaid by the due date for payment, there shall be imposed—</p> <p>(a) An additional penalty of 5 percent of the amount of the penalty unpaid by the due date; and</p> <p>(b) An additional penalty of 2 percent of the amount of the penalty, including any additional penalty, unpaid at the end of the period of one month after the due date; and</p> <p>(c) An additional penalty of 2 percent of the amount of the penalty, including additional penalty, unpaid at the end of each succeeding period of one month.</p> <p>(9) Notwithstanding subsection (8) of this section, the Chief Executive may, in his or her discretion, remit or refund the whole or any part of any additional penalty imposed by that subsection.</p> <p>(10) Where the goods referred to in subsection (1) of this section become free of duty or subject to a lower rate of duty under Part 1 or Part 2 of Schedule 1 to the Tariff Act 1988 after the entry is made, then the penalty shall be calculated according to the provisions of subsection (2)(a) of this section as if the duty liability had not so changed.</p> <p>(11) A person who is dissatisfied with a decision of the Chief Executive under this section may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.</p> <p>Subsection (1AA) was inserted, as from 9 October 2002, by section 9 Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).</p> <p>130 No penalty in certain cases</p> <p>A person is not liable to the imposition of a penalty under section 128 of this Act, if—</p> <p>(a) That person has voluntarily disclosed the error or omission to the Customs before the Customs has notified the person that—</p> <p>(i) The goods to which the entry relates have been selected for examination by the Customs:</p> <p>(ii) Documentation is required to be presented to the Customs in relation to that entry:</p> <p>(iii) The Customs intends to conduct an audit or investigation in relation to a selection of entries that includes that entry, or in relation to entries made over a</p>

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	<p>period of time that includes the time the entry was made; or</p> <p>(b) That person satisfies the Chief Executive that the person formed a view as to the relevant facts pertaining to the entry which, while incorrect, was reasonable having regard to the information available to that person when the entry was prepared; or</p> <p>(c) That person satisfies the Chief Executive that he or she acted in good faith on information provided by the importer or supplier of the goods to which the entry relates, and reliance on the accuracy or completeness of the information so provided was reasonable in the circumstances; or</p> <p>(d) The total correct value for duty of the goods to which the error on the entry relates is less than \$1,000; or</p> <p>(e) An information for an offence against this Act has been laid in relation to the error or omission; or</p> <p>(f) The period between the date of lodgement of the entry of the goods and the date on which the error or omission was first identified exceeds 4 years; or</p> <p>(g) The provisions of section 127 of this Act apply.</p>
India	<p>CBEC MANUAL—<a href="http://www.cbec.gov.in/customs/cs-manual/manual_25.htm">http://www.cbec.gov.in/customs/cs-manual/manual_25.htm</a></p> <p>Offences &amp; Penal Provisions—<a href="http://www.cbec.gov.in/customs/cs-manual/manual_2.htm">http://www.cbec.gov.in/customs/cs-manual/manual_2.htm</a></p> <p><b>Penal liability:</b></p> <p>7. Any misdeclaration in this document will attract the penal provisions of Section 111(f) and Section 112.</p> <p>Smuggling &amp; Other Violations and Penal Provisions:</p> <p>24. Unscrupulous parties do attempt to evade the duties leviable and bypass various prohibitions/restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports/airports/Land Custom Stations without reporting or presenting the goods to customs. Similar attempts are made to take out goods out of the country unauthorizedly. This is essentially what is termed 'smuggling' and customs officers have very important role to play in ensuring that they detect any such attempts of smuggling into or out of the country and take appropriate action both against the goods as well as against the persons involved in smuggling or violation of various restrictions/prohibitions for personal gains at the cost of exchequer unmindful of various other harmful effects which the prohibited and sensitive goods may have, if these are allowed entry into the country. Strict penalties in relation to the goods/persons – involving seizure/absolute confiscation of the prohibited goods, fines and penalties on the persons involved in the offence as well as those abetting the offence are provided. The law also empowers Customs for carrying out searches, arrests and prosecution of persons involved in smuggling and serious commercial frauds and evasion of duties or misuse of export incentives by fraudulent practices (mis-declaration of nature, and value of the goods or suppression of quantities etc.)</p> <p>25. The customs law provides deterrent penal provisions for all such violations but due processes of law have to be followed before any action is taken against the offending goods or persons/conveyance etc. involved. The customs officers have to act as quasi-judicial authorities and the liabilities for duty evaded or sought to be evaded, fines and penalties etc., are adjudged by adjudication action wherein the persons concerned are duly given notice of the contemplated action against the goods/persons/conveyance etc. including the gist of the charges and their basis, and they are provided opportunity for representation as well as personal hearing. The adjudication powers are vested in the customs officers of different specified ranks.</p> <p>26. In grave offence cases prosecution action with imprisonment upto 7 years is also permissible under the Customs Act, but this action is to be taken following the usual criminal proceedings in a court of law, after prosecution sanction has been given by the competent Customs officer.</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch14.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch14.pdf</a></p> <p><b>CHAPTER XIV—CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION</b></p>

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	<p><b>OF PENALTIES</b></p> <p>* [114A. Penalty for short-levy or non-levy of duty in certain cases. -</p> <p>116. Penalty for not accounting for goods. –</p> <p>117. Penalties for contravention, etc., not expressly mentioned. –</p> <p>118. Confiscation of packages and their contents.</p> <p>119. Confiscation of goods used for concealing smuggled good</p> <p>120. Confiscation of smuggled goods notwithstanding any change in form, etc.</p> <p>121. Confiscation of sale-proceeds of smuggled goods.</p> <p>122. Adjudication of confiscations and penalties.</p> <p><b>CHAPTER XVI—OFFENCES AND PROSECUTION</b></p> <p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch16.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch16.pdf</a></p> <p>132. False declaration, false documents, etc. - Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.</p> <p>133. Obstruction of officer of customs. - If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.</p> <p>134. Refusal to be X-rayed.</p> <p>135. Evasion of duty or prohibitions. market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to ### [seven years] and with fine: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than ## [three years];(ii) in any other case, with imprisonment for a term which may extend to ## [three years], or with fine, or with both.</p> <p>140. Offences by companies. - (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :</p> <p>Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p>*[140A. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958. - (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898)1, or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.</p> <p>(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in subsection</p> <p>(3) of section 135.]</p> <p><a href="http://www.cbec.gov.in/customs/cs-act/cs-act-ch1.pdf">http://www.cbec.gov.in/customs/cs-act/cs-act-ch1.pdf</a></p> <p>(39) "smuggling", in relation to any goods, means any act or omission which will render such</p>

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	<p>goods liable to confiscation under section 111 or section 113; In addition:  <a href="http://www.cbec.gov.in/customs/cs-act/formatted-htmls/cs-fortrade-regulation.html">http://www.cbec.gov.in/customs/cs-act/formatted-htmls/cs-fortrade-regulation.html</a></p> <p><b>THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992</b>  <b>[NO. 22 OF 1992]</b></p> <p>11. Contravention of provisions of this Act, rules, orders and export and import policy. — (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.</p> <p>(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.</p> <p>(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.</p> <p>(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.</p> <p>(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.</p> <p>(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.</p> <p>12. Penalty or confiscation not to interfere with other punishments. — No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.</p>

## 6. LENGTH OF TIME TO KEEP IMPORT DOCUMENTATION

The customs codes of most of our case countries specify that import documentation be kept for roughly three to five years; New Zealand specifies keeping documents for seven years. Regulations also specify the time or event from which recordkeeping commences; a normal and logical starting point is the date of the lodgment of formal entry with customs. Customs code should also have provisions regarding the following:

- Who is to retain records (e.g., industries regulated by the customs or border authority include customs brokers, warehouse operators, and transporters).
- What exact business records are to be retained (e.g., see the U.S. A1A list).<sup>4</sup>
- How records are to be retained (e.g., electronic record keeping requirements should include provisions for backup).

<sup>4</sup> <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=560a54610166772f6ddf214642e59495&rgn=div9&view=text&node=19:2.0.1.1.15.0.2.15.4&idno=19>

- That customs have ready access to records on reasonable demand.

The “modernized EU Customs code” lacks specificity in defining records to be retained and how records are to be retained. These requirements, however, will likely be clarified by the regulations of individual member states.

## How Long Must Import Documentation Be Kept?

Country	No. of years	Legislative/Regulatory Language
United States	5 years	<p>“As a general rule, any record required to be made, kept and rendered for examination or inspection under Part 163 must be kept for 5 years from the date of entry (which includes a reconciliation), if the record relates to an entry, or 5 years from the date of the activity which required creation of the record. There are some exceptions to this general rule”.<sup>5</sup></p> <p>TITLE 19 - CUSTOMS DUTIES</p> <p>CHAPTER 4 - TARIFF ACT OF 1930</p> <p>SUBTITLE III - ADMINISTRATIVE PROVISIONS</p> <p>Part III - Ascertainment, Collection, and Recovery of Duties</p> <p>§ 1508. Recordkeeping</p>
EU	3 years	<p>“The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 9(1) for at least three calendar years, by any means accessible by and acceptable to the customs authorities.”<sup>6</sup></p> <p>Article 9—Provision of information to the customs authorities</p> <p>1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.</p> <p>2. The lodging of a summary declaration or customs declaration, or notification, or the submission of an application for an authorization or any other decision, shall render the person concerned responsible for the following:</p> <ul style="list-style-type: none"> <li>(a) the accuracy and completeness of the information given in the declaration, notification or application;</li> <li>(b) the authenticity of any documents lodged or made available;</li> <li>(c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorized operations. The first subparagraph shall apply also to the provision of any information in any other form required by or given to the customs authorities.</li> </ul> <p>Where the declaration or notification is lodged, the application is submitted or information is provided by a customs representative of the person concerned, the customs representative shall also be bound by the obligations set out in first subparagraph.</p>

<sup>5</sup> See Informed Compliance: Recordkeeping; also [http://www.law.cornell.edu/uscode/pdf/uscode19/lii\\_usc\\_TI\\_19\\_CH\\_4\\_ST\\_III\\_PA\\_III\\_SE\\_1508.pdf](http://www.law.cornell.edu/uscode/pdf/uscode19/lii_usc_TI_19_CH_4_ST_III_PA_III_SE_1508.pdf)

<sup>6</sup> [http://ec.europa.eu/taxation\\_customs/customs/procedural\\_aspects/general/community\\_code/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/community_code/index_en.htm)



Country	No. of years	Legislative/Regulatory Language
		<p>Article 31—Keeping of documents and other information</p> <p>1. The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 9(1) for at least three calendar years, by any means accessible by and acceptable to the customs authorities.</p> <p>In the case of goods released for free circulation in circumstances other than those referred to in the third subparagraph, or goods declared for export, that period shall run from the end of the year in which the customs declarations for release for free circulation or export are accepted.</p> <p>In the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, that period shall run from the end of the year in which they cease to be subject to customs supervision. In the case of goods placed under another customs procedure, that period shall run from the end of the year in which the customs procedure concerned has ended.</p> <p>2. Without prejudice to Article 73(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for three years beyond the time limit provided for in paragraph 1 of this article. Where an appeal has been lodged or where court proceedings have begun, the documents and information must be kept for the time limit provided for in paragraph 1 of this article or until the appeals procedure or court proceedings are terminated, whichever is the later.</p>
Australia	5 years	<p>“All relevant commercial documents must be retained for five years from the date of entry”</p> <p><a href="http://www.customs.gov.au/site/page.cfm?u=4271">http://www.customs.gov.au/site/page.cfm?u=4271</a></p>
New Zealand	7 years	<p>95. Keeping of business records — (1) Every licensee, importer, and exporter, must keep or cause to be kept in New Zealand such records, for such period of time not exceeding 7 years, as may be prescribed.</p> <p>(2) Every such person must, as and when required by a Customs officer, —</p> <ul style="list-style-type: none"> <li>(a) Make the records available to the Customs; and</li> <li>(b) Provide copies of the records as required; and</li> <li>(c) Answer any questions relevant to matters arising under this Act asked by any officer in respect of them.</li> </ul> <p>(3) Where, for the purposes of complying with subsection (2) of this section, information is recorded or stored by means of an electronic or other device, the licensee, importer, exporter, or agent thereof, shall, at the request of a Customs officer, operate the device, or cause it to be operated, to make the information available to the Customs officer.</p> <p>Cf. 1966, No. 19, ss. 25A, 96; 1990, No. 89, s. 6 (1)</p> <p>95A Giving Customs access to business records</p> <p>(1) This section applies to a person only if the person—</p> <ul style="list-style-type: none"> <li>(a) is a person to whom section 95(1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, New Zealand (for example, a person involved in the transportation of goods to a Customs place from which goods for export will proceed to a point outside New Zealand); and</li> <li>(b) has been required by the Chief Executive by notice in writing to comply with this section on and after a date specified</li> </ul>



Country	No. of years	Legislative/Regulatory Language
		<p>in the notice in writing.</p> <p>(2) On and after the date specified in the notice in writing a person to whom this section applies must,—</p> <p>(a) if the person is a person to whom section 95(1) applies, give the Customs access to the records the person is required to keep under section 95; and</p> <p>(b) if the person is a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, New Zealand, give the Customs access to any records the person may currently keep of the kind required to be kept under section 95.</p> <p>(3) A person to whom this section applies must give the Customs that access in the form and manner prescribed (for example, in an electronic form and manner), and must ensure that the Customs has that access at all reasonable times.</p> <p>(4) The Chief Executive may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.</p> <p>(5) To avoid doubt, nothing in this section affects any obligation under section 95 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of, records.</p>
India		Information not available.

# Appendix. Case Country Legislation References

Country	Document	Location
United States	Title 19: Customs Duties	<a href="http://www.access.gpo.gov/uscode/title19/title19.html">http://www.access.gpo.gov/uscode/title19/title19.html</a>
United States	Title 18: Crimes and Criminal Procedures	<a href="http://www.access.gpo.gov/uscode/title18/title18.html">http://www.access.gpo.gov/uscode/title18/title18.html</a>
United States	A1A List	<a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=560a54610166772f6ddf214642e59495&amp;rgn=div9&amp;view=txt&amp;node=19:2.0.1.1.15.0.2.15.4&amp;idno=19">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=560a54610166772f6ddf214642e59495&amp;rgn=div9&amp;view=txt&amp;node=19:2.0.1.1.15.0.2.15.4&amp;idno=19</a>
United States	Summary of Laws Enforced by Customs	<a href="http://www.cbp.gov/xp/cgov/toolbox/legal/summary_laws_enforced/">http://www.cbp.gov/xp/cgov/toolbox/legal/summary_laws_enforced/</a>
United States	Informed Compliance Publications	<a href="http://www.cbp.gov/xp/cgov/toolbox/legal/informed_compliance_pubs/">http://www.cbp.gov/xp/cgov/toolbox/legal/informed_compliance_pubs/</a>
United States	Performance and Accountability Report, FY 2007	<a href="http://www.cbp.gov/linkhandler/cgov/toolbox/publications/admin/fiscal_2007_pub.ctt/fiscal_2007.pdf">http://www.cbp.gov/linkhandler/cgov/toolbox/publications/admin/fiscal_2007_pub.ctt/fiscal_2007.pdf</a>
Australia	Customs Act of 1901	<a href="http://www.customs.gov.au/webdata/resources/files/CustomsAct1901.pdf">http://www.customs.gov.au/webdata/resources/files/CustomsAct1901.pdf</a>
New Zealand	Customs and Excise Act 1996 No 27 (as at 01 January 2008), Public Act	<a href="http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM377337.html?search=ts_act_customs&amp;sr=1">http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM377337.html?search=ts_act_customs&amp;sr=1</a>
European Union	EU website – Customs Legislation	<a href="http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm">http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm</a>
European Union	Community Customs Code	<a href="http://eur-lex.europa.eu/Result.do?direct=yes&amp;lang=en&amp;consleg=01992R2913">http://eur-lex.europa.eu/Result.do?direct=yes&amp;lang=en&amp;consleg=01992R2913</a>
European Union	Draft Modernized Customs Code	<a href="http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general/community_code/mccc_en.pdf">http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general/community_code/mccc_en.pdf</a>
India	CBEC Manual	<a href="http://www.cbec.gov.in/customs/cs-manual/manual_idx.htm">http://www.cbec.gov.in/customs/cs-manual/manual_idx.htm</a>
India	Customs Act of 1962	<a href="http://www.cbec.gov.in/customs/cs-act/cs-act-idx.htm">http://www.cbec.gov.in/customs/cs-act/cs-act-idx.htm</a>

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